

Citizens' Utility Ratepayer Board

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Testimony on Behalf of the Citizens' Utility Ratepayer Board
By Steve Rarrick, Staff Attorney
Before the House Energy and Utilities Committee
Re: Senate Bill 469
March 19, 2008

Chairman Holmes and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify regarding Senate Bill 469. My name is Steve Rarrick and I am an attorney with CURB.

Senate Bill 469 provides a mechanism to automatically relieve a local exchange carrier of its carrier of last resort (COLR) obligations under certain circumstances, and another mechanism for the local exchange carrier to seek a waiver of its COLR obligations when those circumstances have not been met.

CURB testified in opposition to Senate Bill 469 on the Senate side because as originally drafted it would have allowed automatic release of COLR obligations based upon the local exchange carrier being denied access to provide internet access services rather than voice services. Amendments made by the Senate have addressed most of the concerns initially raised by CURB. However, we still have a few remaining concerns with the bill as amended.

First, while the phrase "or internet access services" was deleted from the bill at page 1, lines 36, 38, and 39, and page 2, lines 28, 32, and 37, the phrase still remains in paragraph 4 of subsection (c) on page 3, lines 10-12. CURB opposed including this phrase in the provisions providing an automatic release of COLR obligations because the COLR obligation should not be released when the local exchange carrier is not denied access to provide voice services, but only internet access services. The automatic release provisions were amended to delete the phrase "or internet access services", and the waiver of COLR obligations by the KCC should likewise not include consideration of the provision of internet access services. This could result in consumers being denied access to universal services, contrary to the public policy expressed in K.S.A. 66-2001, which states in part, "It is hereby declared to be the public policy of the state to: *“(a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price.”* Local exchange carriers should not be relieved of COLR obligations where they are not denied access to provide local telephone voice service. As a result, CURB would urge the Committee to delete the phrase "internet access services" at page 3, lines 10-12. With this amendment, CURB has no objection to the remainder of the bill.

Second, paragraph 5 of subsection (c) at page 3 only allows for the “owner or developer” to request that the local exchange carrier make service available to the occupants of the property if the conditions leading to release of COLR obligations cease to exist. CURB believes this should be amended to allow “occupants of the property,” to make such a request, which would allow tenants of apartment buildings to request service from the local exchange carrier when the conditions leading to the release of COLR obligations cease to exist.

Finally, another amendment the Committee may want to consider is to simply prohibit exclusive access contracts as being contrary to the public policy expressed in K.S.A. 66-2001 because they deny Kansans access to first class telecommunications infrastructure. This could be accomplished by the following language¹:

"(7) On or after July 1, 2008, no owner or developer of real property may discriminate against a local exchange carrier or its ability to provide local telecommunications service to subsequent tenants or purchasers of the property, including discriminatory terms and conditions by which a local exchange carrier gains physical access to the property to place its facilities and provide local telecommunications services to the property's tenants. In no event may the lack of agreement over terms and conditions of access delay the ability of a requesting local exchange carrier to obtain access for more than thirty days following an initial request therefor."

CURB understands this amendment may cause some concern to property developers, but we believe these exclusive access contracts are contrary to the public policy of providing Kansans access to first class telecommunications infrastructure and deny consumers the benefits of competition for local telephone service.

In closing, CURB would note it appears a technical reference error still remains at page 3, line 3, where the bill states, “pursuant to subsection (c).” Since this paragraph (3) language is in subsection (c), it may be clearer if this phrase was amended to state, “pursuant to *paragraph* (2) of subsection (c)”.

Thank you again for the opportunity to testify on behalf of CURB. I urge the Committee to consider the amendments we have proposed to Senate Bill 469.

¹ CURB’s proposed amendment is based on language contained in New York House Bill 2498, 2007-2008 Regular Session, <http://assembly.state.ny.us/leg/?bn=A02498&sh=t>.